1962-1963
District of Columbia Chapter
of
The Federal Bar Association
FEDERAL BAR BUILDING
1815 H STREET, N.W.
WASHINGTON 6, D. C.
METROPOLITAN 8-1234

FOR IMMEDIATE RELEASE

FROM: L. M. Pellerzi
NA 8-7460 Ext. 654

L. M. Pellerzi, President of the District of Columbia Chapter of The Federal Bar Association, announced today that the Board of Directors of that Chapter passed a resolution calling "upon all lawyers to use their positions of leadership and influence to promote in every way the principles of equal justice and equal opportunity for all Americans". The Chapter has arranged a luncheon program to be held at noon on July 30, 1963, at the National Press Club at which the Honorable Burke Marshall, Assistant Attorney General in charge of the Civil Rights Division will speak to an assemblage of lawyers concerning the current racial controversy. This program will be under the auspices of the Chapter's Council on Community Affairs headed by Mr. Bettin Stalling, former National President of The Federal Bar Association, which has been most active in calling for the assumption by lawyers of leadership responsibility in community problems particularly in the area of race relations.

7/11/63

Tax Division
Assistant
Attorney General

July 16, 1963

The Attorney General

Harrison Tweed suggests that it would be well if you could attend at least one session of the A.B.A. House of Delegates meeting - probably the one scheduled for Tuesday, August 13. He feels that your voice should be heard in the deliberations on the ABA's position on Civil Rights, and that you have made a very good impression in your previous appearances.

cc: AAG Marshall

August 30, 1963

Harrison Tweed, Esquire
Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
New York City 1, New York

Bernard G. Segal, Esquire
Schnader, Harrison, Segal & Lewis
1719 Packard Building
Philadelphia 2, Pennsylvania

Lloyd N. Cutler, Esquire
Wilmer, Cutler & Pickering
900 Farragut Building
Washington 6, D. C.

Gentlemen:

If you have not already done so, you will be interested to see the enclosed report on the Civil Rights Act of 1963 which was prepared by the Committee on Federal Legislation of the Association of the Bar of the City of New York.

Sincerely yours,

/s/ Louis F. Oberdorfer

Louis F. Oberdorfer
Assistant Attorney General

5

250/63/6

The Association of the Bar
of the City of New York
42 West 44th Street

COMMITTEE ON FEDERAL LEGISLATION

Report on Proposed Federal Civil Rights Laws Relating to Public Accommodations

Introduction

This Report is addressed to certain bills presently before Congress to eliminate discrimination in public accommodations, and to establish causes of action by private individuals and the Attorney General to prevent such discrimination.

We have considered principally the provisions comprising Title II of the proposed "Civil Rights Act of 1963", introduced by Senator Mansfield and others as S. 1731, 88th Congress, 1st Session, and by Representative Celler as H.R. 7152, 88th Congress, 1st Session. Senator Mansfield and others have also introduced substantially the same provisions as Title II in a separate bill, S. 1732, the proposed "Interstate Public Accommodations Act of 1963".* Other bills dealing with this problem have been introduced by a substantial number of other Senators and Representatives, including S. 1591 introduced by Senators Dodd and Cooper and others, and H.R. 6720 introduced by Representative Lindsay and by others in the same form. S. 1731 and H.R. 7152 were proposed by President Kennedy in a special message to Congress on June 19, 1963, which stated that the public accommodations provisions are designed "to guarantee all citizens equal access to the services and facilities of hotels, restaurants, places of amusement and retail establishments". N. Y. Times, June 20, 1963, p. 16, col. 4.

Title II of S. 1731 invokes the powers of Congress under both the Commerce Clause and the Fourteenth Amendment of the Constitution, with chief reliance placed upon the Commerce Clause, and with the operative sections, as introduced, relying solely on the Commerce Clause. S. 1591 and H.R. 6720 are based upon the Fourteenth Amendment, and proposals have been made to amend Title II to place greater operative reliance upon the Fourteenth Amendment.

---

* Unless otherwise indicated the references to the "proposed legislation" in this Report refer to Title II of S. 1731, the full text of which is attached hereto as an Appendix.

Title II now provides that all persons shall be entitled "without discrimination or segregation on account of race, color, religion, or national origin, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations" of enumerated kinds of "public establishments" if such establishments satisfy specified criteria with respect to activities or operations related to interstate commerce. The denial of or interference with the right to nondiscriminatory treatment is prohibited, and an aggrieved person, or the Attorney General for or in the name of the United States, may institute a civil action for injunctive relief in the Federal District Courts.

In order for the Attorney General to institute suit, he must certify that he has received a written complaint from the aggrieved person and that in his judgment such person is unable to initiate and maintain appropriate legal proceedings because of lack of adequate financial means or effective representation or risk of economic or other injury. If local laws appear to forbid the discrimination complained of, the Attorney General is required to notify the appropriate State or local officials, and, upon their request, to afford them a reasonable time to act before he institutes an action. In the case of other complaints, the Attorney General is required, before instituting an action, to refer the matter to the Community Relations Service, contemplated by Title IV of the bill, to attempt to secure compliance with the statute by voluntary procedures. Compliance with the provisions for action by local officials or the Community Relations Service is not required if the Attorney General certifies to the Court that delay would adversely affect the interests of the United States or that compliance with such provisions would be fruitless.

Summary

We support the proposed legislation and we believe it is validly founded on the Commerce Clause and also derives substantial constitutional support from the Fourteenth Amendment. We believe that Congress should rely on both constitutional provisions, since we regard the Commerce Clause and the Fourteenth Amendment as complementary and not competitive sources of Congressional power.

The Commerce Clause

Article I, Section 8, Clause 3, of the Constitution confers upon Congress the power "To regulate Commerce * * * among the several States * * * ."

The Commerce Clause has repeatedly been held by the United States Supreme Court to empower Congress to reach and control activity which affects interstate commerce and to remove burdens on such

commerce whether or not a particular activity or transaction embraced by the legislation is itself interstate in character. Even if an activity or transaction considered in isolation is both intrastate in character and insubstantial in its impact on interstate commerce, Congress may legislate with regard to the aggregate impact or burden on interstate commerce of all such activities or transactions. The power reaches not only activities which are purely "commercial" in nature, but, in furtherance of particular public policies, can be, and has been, used to reach non-commercial activities. In our opinion, under these principles, each fully supported by authority, the proposed public accommodations law would be a valid exercise of the power of Congress under the Commerce Clause.

Effect of Discrimination on Interstate Commerce. Title II contains proposed legislative findings that discriminatory acts (a) make unavailable to Negro interstate travelers goods and services which are available to others; (b) make adequate lodgings for Negro interstate travelers difficult to obtain and inconvenient to reach; (c) require Negro interstate travelers to detour to find adequate eating places; (d) restrict the audiences of interstate entertainment industries and thus burden interstate commerce; (e) have led to the withholding of patronage from retail establishments by those affected by such acts and inhibit and restrict the normal distribution of goods in the interstate market; (f) drive conventions away from cities where discriminatory practices prevail; and (g) reduce the mobility of the national labor force and deter the interstate movement of industries.

We believe that these findings that discrimination in public accommodations burdens and obstructs interstate commerce are manifestly reasonable for Congress to make. Such findings help to lay the proper foundation for legislation intended to deal with the problem as found to exist by Congress and will be given great weight when the constitutionality of the proposed legislation is under attack. See Block v. Hirsh, 256 U.S. 135, 154 (1921); Borden's Co. v. Baldwin, 293 U.S. 194, 209 (1934); Communist Party v. Subversive Activities Control Board, 367 U.S. 1, 94 (1961).

Precedents Under Commerce Clause Support Proposed Legislation. The validity of the proposed legislation as an exercise of the commerce power is clear from the decisions of the United States Supreme Court in N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1936), United States v. Darby, 312 U.S. 100 (1941) and numerous other cases.

In the Jones & Laughlin case, the Court sustained the constitutionality of the National Labor Relations Act under the Commerce Clause. The Court held that, irrespective of respondent's contention that its manufacturing activities represented a break in the "stream of commerce," Congress could legislate "to protect

interstate commerce from the paralyzing consequences of industrial war." 301 U.S. at 41. The Court summarized the course of relevant authority as follows:

> "The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for 'its protection and advancement' (The Daniel Ball, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (Mobile County v. Kimball, 102 U.S. 691, 696, 697); 'to foster, protect, control and restrain.' Second Employers' Liability Cases, supra [223 U.S.] p. 47. See Texas & N.O. R. Co. v. Railway Clerks, supra [281 U.S. 548]. That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' Second Employers' Liability Cases, p. 51; Schecter Corp. v. United States, supra [295 U.S. 495]. Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. Schecter Corp. v. United States, supra. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. Id. The question is necessarily one of degree. As the Court said in Chicago Board of Trade v. Olsen, supra [262 U.S.] p. 37, repeating what had been said in Stafford v. Wallace, supra [258 U.S. 495]: 'Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause and it is primarily for Congress to consider and decide the fact of the danger and meet it.'" 301 U.S. at 36-37.

The Court noted that in Chicago Board of Trade v. Olsen, it had upheld the Grain Futures Act of 1922 "with respect to transactions on the Chicago Board of Trade, although these transactions were 'not in and of themselves interstate commerce.' Congress had

found that they had become 'a constantly recurring burden and obstruction to that commerce.' Chicago Board of Trade v. Olsen, 262 U.S. 1, 32." 301 U.S. at 35-36.

In the Jones & Laughlin case, furthermore, the Court stressed the factor of experience in determining the scope of Congressional power over interstate commerce:

> "We have often said that interstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.
>
> "Experience has abundantly demonstrated, that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances." 301 U.S. at 41-42.

This emphasis on the relevance of practical experience has clear pertinence to the present question.

Similarly, in United States v. Darby, the Supreme Court sustained provisions of the Fair Labor Standards Act barring from shipment in interstate commerce goods produced by employees whose wages and hours of employment did not conform to the requirements of the statute, and prescribing adherence to such requirements with respect to all employees engaged in the production of goods for commerce. In upholding the prohibition on shipment of the proscribed goods in interstate commerce, the Court considered the nature of the commerce power:

> "The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction and over which the courts are given no control. McCray v. United States, 195 U.S. 27; Sonzinsky v. United States, 300 U.S. 506, 513 and cases cited. 'The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged power.' Veazie Bank v. Fenno, 8 Wall. 533. Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the Commerce Clause." 312 U.S. at 115.

The power of Congress to forbid the production of goods for commerce unless the prescribed labor standards were met was likewise upheld, and the Court stated:

> "The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See McCulloch v. Maryland, 4 Wheat. 316, 421. Cf. United States v. Ferger, 250 U.S. 199.
>
> "* * *
>
> "But it does not follow that Congress may not by appropriate legislation regulate intrastate activities where they have a substantial effect on interstate commerce. See Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U.S. 453, 466. A recent example is the National Labor Relations Act for the regulation of employer and employee relations in industries in which strikes, induced by unfair labor practices named in the Act, tend to disturb or obstruct interstate commerce. See National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 38, 40; National Labor Relations Board v. Fainblatt, 306 U.S. 601, 604, and cases cited. But long before the adoption of the National Labor Relations Act this Court had many times held that the power of Congress to regulate interstate commerce extends to the regulation through legislative action of activities intrastate which have a substantial effect on the commerce or the exercise of the Congressional power over it." 312 U.S. at 118-20.

The aggregate impact on commerce of goods produced under proscribed conditions was deemed controlling rather than the volume of any one shipper or producer:

> "Congress, to attain its objective in the suppression of nationwide competition in interstate commerce by goods produced under substandard labor conditions, has made no distinction as to the volume or amount of shipments in the commerce or of production for commerce by any particular shipper or producer. It recognized that in present day industry, competition by a small part may affect the whole and that the total effect of the competition of many small producers may be great. See H. Rept. No. 2182, 75th Cong. 1st Sess. p. 7. The legislation aimed at a whole embraces all its parts. Cf.

National Labor Relations Board v. Fainblatt, supra, 606." 312 U.S. at 123.

Again, in Wickard v. Filburn, 317 U.S. 111 (1942), the Court upheld the marketing penalties imposed for noncompliance with the wheat marketing quotas of the Agricultural Adjustment Act of 1938, even with respect to production not intended for commerce but wholly for consumption on the farm. The Court stated that "even if appellee's [the farmer's] activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'" 317 U.S. at 125.

The Court's consideration in that case of the power of Congress to stimulate commerce is likewise pertinent with respect to the proposed findings in Title II:

> "The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon. This record leaves us in no doubt that Congress may properly have considered that wheat consumed on the farm where grown, if wholly outside the scheme of regulation, would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices." 317 U.S. at 128-29.

The Court further held that the fact that "appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial. Labor Board v. Fainblatt, 306 U.S. 601, 606 et seq." 317 U.S. at 127-28.

Each of these decisions is replete with citations to additional authority supporting the power of Congress to regulate activities which themselves may be deemed intrastate in character but which burden or obstruct interstate commerce, and subsequent decisions reinforce this doctrine. E.g., Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U.S. 219, 229-35 (1948); United States v. Women's Sportswear Mfctr's Assn., 336 U.S. 460, 464 (1949); United States v. South-Eastern Underwriters Assn., 322 U.S. 533, 539-53 (1944); Polish Nat. Alliance v. N.L.R.B., 322 U.S. 643, 648 (1944). As tersely summarized in the Women's Sportswear case:

> "If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." 336 U.S. at 464.

As made clear by the Darby and Wickard v. Filburn decisions, Congress is not limited under the Commerce Clause by the size or impact on commerce of any particular enterprise subjected to regulation. It is the aggregate impact on commerce of the regulated activities which is determinative, irrespective of the extent of impact of any specific isolated activity. In Wickard v. Filburn, for example, the farmer planted only 23 acres and the amount of wheat at issue amounted to only 239 bushels. Similarly, in Mabee v. White Plains Publishing Co., 327 U.S. 178 (1946), the Fair Labor Standards Act was applied to a newspaper with a circulation of about 9,000 copies of which only 45 were mailed out of the State in which the newspaper was printed.*

Use of Commerce Clause to Eliminate "Social" Evils. It is abundantly clear that Federal public accommodations legislation can be validly founded on the Commerce Clause even if the proposed legislation be regarded as directed in large measure at a "social" evil which might be the subject of State regulation under the police power. In the first place, the "social" evil has clear economic consequences of which the proposed legislation takes account. Furthermore, as stated in Darby:

> "It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states. Seven Cases v. United States, 239 U.S. 510, 513; Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146, 156; United States v. Carolene Products Co., 304 U.S. 144, 147; United States v. Appalachian Electric Power Co., 311 U.S. 377." 312 U.S. at 114-15.

Indeed, the commerce power has been relied upon to reach a variety of non-economic activities deemed to violate public

---

* It has been suggested in some quarters that public accommodations having a gross annual income below a specified amount be excluded from the proposed legislation. We do not favor such an exclusion. The impact on commerce of relatively small businesses may well vary more with the location and community involved than the actual dollar volume. For example, there may be stops along interstate bus and automobile routes where only small lunch counters or motels are available. The applicability of Title II would in all cases depend on the applicability of the statutory criteria which refer to activity or operations related to interstate commerce, and in an enforcement action by the Attorney General he would have to certify under Section 204(a)(2)(ii) of Title II that "the purposes of this title will be materially furthered by the filing of an action".

policy. Most pertinent are cases upholding the barring of racial discrimination by interstate carriers and related public facilities. E.g., Georgia v. United States, 371 U.S. 9 (1962), aff'g 201 F. Supp. 813 (N.D. Ga. 1961); Boynton v. Virginia, 364 U.S. 454 (1960); Henderson v. United States, 339 U.S. 816 (1950); Mitchell v. United States, 313 U.S. 80 (1941). The Interstate Commerce Commission has dealt with the subject on numerous occasions, both in specific proceedings and through a General Order forbidding such discrimination. Docket No. MC-C-335, paragraphs 180a(1), 180a(2) (1961). Indeed, the Commission's decisions on matters of racial discrimination date back to such cases as Heard v. Georgia R. Co., 1 I.C.C. 719 (1888), and Councill v. Western & A.R. Co., 1 I.C.C. 638 (1887), and extend to such recent decisions as N.A.A.C.P. v. St. Louis S.F. R. Co., 297 I.C.C. 335, 347-8 (1955).

The Supreme Court has also consistently sustained under the Commerce Clause statutes having major social objectives. It has upheld legislation forbidding the interstate transportation of lottery tickets as an aid to local enforcement of gambling prohibitions. Lottery Cases, 188 U.S. 321 (1903). Regulation designed to insure pure food and drugs has been sustained. Hipolite Egg Co. v. United States, 220 U.S. 45 (1911). The banning of transportation of women in interstate commerce for purposes of prostitution has been upheld. Hoke v. United States, 227 U.S. 308 (1913). The prohibition of interstate transportation of women for immoral purposes has been upheld even where commercial prostitution is not involved. Caminetti v. United States, 242 U.S. 470 (1917). Thus, it is apparent that there is no pertinent distinction under the Commerce Clause between "economic" and "social" legislation.

Effect on Commerce Clause Jurisdiction of Fifth and Tenth Amendments. The proposed legislation would violate neither the Fifth nor Tenth Amendment to the Constitution. It is beyond challenge at this date that reasonable regulation to meet a public evil does not violate the Due Process Clause. "The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people." Nebbia v. New York, 291 U.S. 502, 538-39 (1934). See N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 43-44 (1936); Chicago Board of Trade v. Olsen, 262 U.S. 1, 40-41 (1923).

In Wickard v. Filburn, the Court rejected the contention that the legislation involved violated the Fifth Amendment by limiting the use of private property:

> "It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others." 317 U.S. at 129.

President Kennedy's message to Congress referred to some thirty States, the District of Columbia and numerous cities "covering some two-thirds of this country and well over two-thirds of its people" which have already enacted "laws of varying effectiveness" against discrimination in places of public accommodation. N.Y. Times, June 20, 1963, p. 16, cols. 3-4. It is clear that State and local anti-discrimination laws do not violate the Due Process Clause of the Fourteenth Amendment. Railway Mail Assoc. v. Corsi, 326 U.S. 88 (1945) (New York law prohibiting racial discrimination by labor union upheld against Due Process Clause challenge). See also Bolden v. Grand Rapids Operating Corp., 239 Mich. 318, 214 N.W. 241 (1927); Pickett v. Kuchan, 323 Ill. 138, 153 N.E. 667 (1926); People v. King, 110 N.Y. 418, 18 N.E. 245 (1888) (cases involving public accommodations laws). Patently, Federal legislation based upon the Commerce Clause is no more subject to attack under the Due Process Clause of the Fifth Amendment than are such State enactments under the Fourteenth Amendment. As observed by the Supreme Court in United States v. Rock Royal Co-operative, 307 U.S. 533, 569-70 (1939):

> "The authority of the Federal Government over interstate commerce does not differ in extent or character from that retained by the states over intrastate commerce."

Any argument against the validity of the proposed legislation based upon the Tenth Amendment is similarly without merit, as shown in the Darby case:

> "Our conclusion is unaffected by the Tenth Amendment which provides: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers.
> * * *
>
> "From the beginning and for many years the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end." 312 U.S. at 123-24.

We believe that the proposed legislation is well within the granted power of Congress and is a wholly appropriate means to deal with a national problem of great importance.

The Fourteenth Amendment

The Equal Protection Clause in Section 1 of the Fourteenth Amendment provides that "No State * * * shall deny to any person within its jurisdiction the equal protection of the laws." This prohibition may be enforced by Congress by appropriate legislation under the provisions of Section 5 of the Amendment.

The findings in Title II of S. 1731 rely on the Fourteenth Amendment, as well as the Commerce Clause, in Section 201(h) and (i), which provide:

> "(h) The discriminatory practices described above are in all cases encouraged, fostered, or tolerated in some degree by the governmental authorities of the States in which they occur, which license or protect the businesses involved by means of laws and ordinances and the activities of their executive and judicial officers. Such discriminatory practices, particularly when their cumulative effect throughout the Nation is considered, take on the character of action by the States and therefore fall within the ambit of the equal protection clause of the fourteenth amendment to the Constitution of the United States.
>
> "(i) The burdens on and obstructions to commerce which are described above can best be removed by invoking the powers of Congress under the fourteenth amendment and the commerce clause of the Constitution of the United States to prohibit discrimination based on race, color, religion, or national origin in certain public establishments."

S. 1591 and H.R. 6720 are based exclusively on the Fourteenth Amendment. S. 1591 provides relief against discrimination in public accommodations "conducted under a State license," and H.R. 6720 provides relief against discrimination in businesses "authorized by a State."

Consideration of a Fourteenth Amendment basis for public accommodations legislation must begin with the Civil Rights Cases, 109 U.S. 3 (1883). The Supreme Court there held that Sections 1 and 2 of the Civil Rights Act of 1875, which purported to prohibit discrimination in "inns, public conveyances on land or water, theaters, and other places of public amusement," were unconstitutional because directed at individual rather than State action:

> "It is State action of a particular character that is prohibited [by the Fourteenth Amendment]. Individual invasion of individual rights is not the subject-matter of the Amendment. It has a deeper and broader scope. It

> nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." 109 U.S. at 11.

It is hardly likely that the "State action" requirement of the Civil Rights Cases will be overruled, particularly in view of such recent pronouncements by the Court as in Burton v. Wilmington Pkg. Auth., 365 U.S. 715, 722 (1961):

> "It was clear, as it always has been since the Civil Rights Cases, supra, that 'Individual invasion of individual rights is not the subject-matter of the amendment' * * * ".

The principle of the Civil Rights Cases, however, does not prevent application of the proposed legislation to the areas of discriminatory activity which are already subject to the Congressional power granted by the Fourteenth Amendment, namely, activity which is not purely "individual invasion of individual rights" but involves the State sufficiently to bring the Amendment into play. Indeed, the majority of the Court in the Civil Rights Cases addressed itself only to the lack of any requirement of State action under the 1875 Act and did not consider what degree of State participation is required to support the applicability of the Fourteenth Amendment, stating:

> "It is not necessary for us to state, if we could, what legislation would be proper for Congress to adopt. It is sufficient for us to examine whether the law in question is of that character.
>
> "An inspection of the law shows that it makes no reference whatever to any supposed or apprehended violation of the 14th Amendment on the part of the States." 109 U.S. at 13-14

The concept of "State action" under the Fourteenth Amendment has undergone considerable expansion in recent years. Thus, the prohibitions of the Fourteenth Amendment extend to State judicial enforcement of racially restrictive covenants among private persons. Shelley v. Kraemer, 334 U.S. 1 (1948). The enforcement of State trespass statutes against Negroes for refusing to leave a lunch counter has been held to be barred by the Fourteenth Amendment where there is a local segregation ordinance. Even if the exclusion is based on the store manager's own decision, the Equal Protection Clause is applicable because the existence of the ordinance is deemed to remove his decision from the sphere of private choice. Peterson v. Greenville, 373 U.S. 244 (1963). Where local

officials in the absence of an ordinance publicly state that Negroes would not be permitted to seek desegregated lunch-counter service, the situation is considered the same from the standpoint of the Fourteenth Amendment as if there were such an ordinance. Lombard v. Louisiana, 373 U.S. 267 (1963). Lessees operating restaurants in a municipal airport and in an automobile parking building operated by a State agency have also been held subject to the Fourteenth Amendment. Turner v. Memphis, 369 U.S. 350 (1962); Burton v. Wilmington Pkg. Auth., 365 U.S. 715 (1961). In these and other situations, the application of the Fourteenth Amendment is no longer in doubt, and such decisions suggest that there may well be further expansion of what constitutes "State action" under the Amendment when other factual situations come before the Court.

The reliance upon the granting of a State license or authorization in S. 1591 and H.R. 6720 for Fourteenth Amendment coverage may rest in part upon a portion of the dissenting opinion of the first Mr. Justice Harlan in the Civil Rights Cases. In the course of his discussion of discriminatory treatment in places of public amusement as a vestige of slavery which could be barred by Congress under the Thirteenth Amendment, he stated:

> "The authority to establish and maintain them comes from the public. The colored race is a part of that public. The local government granting the license represents them as well as all other races within its jurisdiction. A license from the public to establish a place of public amusement, imports, in law, equality of right, at such places, among all the members of that public. This must be so, unless it be--which I deny--that the common municipal government of all the people may, in the exertion of its powers, conferred for the benefit of all, discriminate or authorize discrimination against a particular race, solely because of its former condition of servitude." 109 U.S. at 41.

Similarly, in his discussion of the Fourteenth Amendment, he wrote:

> "What I affirm is that no State, nor the officers of any State, nor any corporation or individual wielding power under State authority for the public benefit or the public convenience, can, consistently either with the freedom established by the fundamental law, or with that equality of civil rights which now belongs to every citizen, discriminate against freemen or citizens, in those rights, because of their race, or because they once labored under the disabilities of slavery imposed upon them as a race." 109 U.S. at 59

Mr. Justice Douglas substantially reiterated this position with respect to the Fourteenth Amendment in two recent

concurring opinions. Lombard v. Louisiana, 373 U.S. 267, 274 (1963); Garner v. Louisiana, 368 U.S. 157, 184 (1961). In Garner, Mr. Justice Douglas also adverted to the pattern of segregation pursuant to Louisiana custom:

> "Though there may have been no state law or municipal ordinance that in terms required segregation of the races in restaurants, it is plain that the proprietors in the instant cases were segregating blacks from whites pursuant to Louisiana's custom. Segregation is basic to the structure of Louisiana as a community; the custom that maintains it is at least as powerful as any law. If these proprietors also choose segregation, their preference does not make the action 'private', rather than 'state', action. If it did, a minuscule of private prejudice would convert state into private action. Moreover, where the segregation policy is the policy of a State, it matters not that the agency to enforce it is a private enterprise." 368 U.S. at 181 (emphasis in opinion).

In view of the Lombard decision, it would appear that the practice of segregating public accommodations in many communities to conform to the position taken by local officials would infringe the Fourteenth Amendment even in the absence of local laws requiring segregation. The combination of various circumstances, perhaps including elements of local licensing, regulation, official attitude and custom, might in other instances also support the application of the strictures of the Fourteenth Amendment. Licensing alone, however, has not thus far been judicially adopted as a basis for invoking the Fourteenth Amendment. Moreover, legislation referable to a licensing requirement alone could produce arbitrary variations between communities depending upon the nature and extent of local licensing laws and might exclude various types of public accommodations entirely if licensing of them is abolished or non-existent in the locality. However, there is no necessity to have the reliance on the Fourteenth Amendment so limited.

Over ninety years ago Congress exercised its power under the Fourteenth Amendment to provide relief against deprivation of constitutional rights "under color of any statute, ordinance, regulation, custom, or usage of any State or Territory * * *" 42 U.S.C. §1983 (originally Section 1 of the Ku Klux Act of April 20, 1870). See Monroe v. Pape, 365 U.S. 167 (1961). Congress has also employed similar language in imposing criminal penalties for the deprivation of constitutional rights. 18 U.S.C. §242. The Court in the Civil Rights Cases adverted with apparent approval to the substantially similar version of this penal statute then in effect as illustrative of an act which was properly directed against "State action" under the Fourteenth Amendment. The Court said:

"This law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified. In the Revised Statutes, it is true, a very important clause, to wit, the words 'any law, statute, ordinance, regulation or custom to the contrary notwithstanding,' which gave the declaratory section its point and effect, are omitted; but the penal part, by which the declaration is enforced, and which is really the effective part of the law, retains the reference to State laws, by making the penalty apply only to those who should subject parties to a deprivation of their rights under color of any statute, ordinance, custom, etc., of any State or Territory: thus preserving the corrective character of the legislation." 109 U.S. at 16-17

Title II of S. 1731 might be amended in similar terms, as has been suggested by some proponents of increased reliance on the Fourteenth Amendment, by providing for preventative relief against discrimination in specified kinds of public establishments by any person acting under color of any law, statute, ordinance, regulation or custom or usage having the force of law, of any State or Territory.*

Use of Multiple Constitutional Support

We believe that reliance on both the Commerce Clause and the Fourteenth Amendment in the proposed legislation would be highly advisable. The broadest coverage and the most secure constitutional support can be derived from reliance upon all pertinent sources of power. Much legislation is expressly founded on more than one power of Congress, and the Supreme Court has relied on multiple constitutional support in upholding the validity of various statutes, e.g. Board of Trustees v. United States, 289 U.S. 48 (1933) (Tariff Act of 1922 upheld under power to raise revenues and power to regulate commerce with foreign nations); Ashwander v. T.V.A., 297 U.S. 288 (1936) (Tennessee Valley Authority Act upheld on basis of war, commerce and navigation powers). See also United States v. Manning, 215 F. Supp. 272 (W.D. La. 1963) (voting registration provisions of Civil Rights Act of 1960 upheld under Fourteenth and Fifteenth Amendments). Similarly, in

---

* Such a provision in the proposed legislation would to some extent parallel the provisions of 42 U.S.C. §1983, supra, but would give the Attorney General a cause of action not afforded by that Section.

the elimination of discriminatory treatment in public accommodations, the sources of Congressional power provided by the Commerce Clause and the Fourteenth Amendment are fully compatible, and we believe that both should be invoked by Congress.

Policy Considerations and Recommendation

The course of recent events makes it plain that the demands of the Negro for just treatment are being insistently pressed and that, one hundred years after the Emancipation Proclamation, the patience of the Negro with inequality and injustice is at an end. Legislation and judicial decisions have, in recent years, begun to afford redress in numerous respects, but discriminatory treatment in public accommodations open to others remains a continual affront.

We thoroughly endorse the moral and social objectives of the proposed legislation. It is a primary, ancient and honorable function of the law to provide the instruments for the peaceful and just resolution of disputes among men. We believe that it is the responsibility of the Bar to support the provision of adequate legal remedies to that end and to encourage the respect for legal processes which can only be fostered among the affected groups by providing vehicles of relief against injustice. In our opinion the proposed legislation would fill the serious need for a means under law to redress a major grievance of the Negro. We approve the individual right of action provided by the bill, but in view of the frequent obstacles to suit by private litigants for relief against discriminatory treatment, we believe that an active, affirmative role by the Federal Government is necessary. Hence, we endorse the provisions in the proposed legislation which, while encouraging local initiative and responsibility, empower the Attorney General to institute enforcement actions.

We strongly recommend enactment of the proposed legislation.

Respectfully submitted,

COMMITTEE ON FEDERAL LEGISLATION

Fred N. Fishman, Chairman

Sidney H. Asch	Nanette Dembitz	Ida Klaus
Eastman Birkett	Arthur J. Dillon	Leonard M. Leiman
George H. Cain	Barry H. Garfinkel	George Minkin
Joseph Calderon	Elliot H. Goodwin	Gerald E. Paley
Donald J. Cohn	Sedgwick W. Green	Albert J. Rosenthal
Louis A. Craco	H. Melville Hicks, Jr.	Peter G. Schmidt
Benjamin F. Crane	Robert M. Kaufman	Henry I. Stimson

August 19, 1963

[redacted]; 163

Mrs. Theron A. Simmons
[redacted]
Rapid City, South Dakota

Dear Mrs. Simmons:

Thank you for your letter of August 1, 1963. I have forwarded a copy to Messrs. Harrison Combs and Bernard G. Segal, Co-Chairmen of the Lawyers' Committee for Civil Rights under Law. They are acting as an organization which can effectively respond to matters which appear in the press and on which lawyers might properly comment.

Sincerely,

/s/
Attorney General

THERON A. ZIMMERMAN
Minister
312 Meade Street

Telephones:
Church FI 2-2017
Parsonage FI 3-0511

MRS. LYLE BOCKWOLDT
Church Secretary

August 11, 1963

The Honorable Robert Kennedy
Attorney General of the U.S.A.

Dear Mr. Kennedy,

Like many citizens concerned for the advancement of civil rights I have been pleased to know of your meetings with many varied groups. Just a few days ago I received an excellent letter from a woman who attend Fisk Race Relations Institute with me earlier in the summer. She was very appreciative of the meeting the President, V. Pres. and you held with 300 women leaders. She attended and felt it very worthwhile.

seemed to be the consensus of the meeting of the Lawyers Committee on Civil Rights that met with President Kennedy in Washington recently. R. James Brennan, local attorney who attended the meeting, reported to the Lions Club Tuesday on his reactions to the conference.

Besides the President, other speakers were Vice President Lyndon Johnson and Attorney General Robert Kennedy. Three hours of speaking and questions and answers were consumed, Brennan said.

Outcome of the conference was the appointment of a committee from the American Bar Association to work out recommendations and advise the President.

Brennan said he was impressed with the broad-minded manner in which the legal profession received the principles of proposed civil rights legislation.

Citizens' rights and duties go hand in hand, and unless the Negro accepts this he is not going to progress, the speaker said. He also said the Negro must earn his right to first class citizenship and not remain in a carefree and slum situation. He should prove his right to accept first class citizenship.

Brennan said the Negroes were turning against President Kennedy and the Democratic party because they claim election promises have not been kept. Now they are taking the matter into their own hands. However, the speaker said, the Negro leaders are now losing control of their members. Ha!

The proposed Negro march Aug. 26 is dangerous, as there is no actual leadership or means of control. Ridiculous

Don Knecht was program chairman.

R. L. Hall, a charter member of the club, was reinstated as a member.

DUDLEY, HOFFMAN, PRICE & GRUNERT
COUNSELLORS AT LAW
P. O. BOX 717, ST. THOMAS, VIRGIN ISLANDS
CABLE ADDRESS "DUNAM"
TELEPHONE: 774-1328
774-1281

GEORGE H. T. DUDLEY
LOUIS HOFFMAN
DONALD E. PRICE
RICHARD E. GRUNERT

OFFICES
GRAND HOTEL BUILDING
CHARLOTTE AMALIE, ST. THOMAS, V. I.
20A COMPANY STREET
CHRISTIANSTED, ST. CROIX, V. I.

August 15,1963.

Bernard G. Segal, Esquire, Co-Chairman
Lawyers Committee For Civil Rights Under Law
1719 Packard Building,
Philadelphia 2, Penna.

Dear Bernie:

In reporting to the President of our Bar concerning the activities of your Committee and the corresspondence in reference thereto from yourself and Attorney General Kennedy, I also recommended that our Bar contribute to the expenses of your Committee.

I am very pleased to advise that my suggestion was accepted and I enclose check to the order of your Committee dated August 9,1963 #252 drawn on the Virgin Islands National Bank, Christiansted, in the sum of $300.00. This check was accompanied by a letter to me from our President in which he requested I send it "to the appropriate person" which I am doing.

We all in the Virgin Islands wish your Committee success and as you already know we are ready to assist in any way desired.

With warm regards, and looking forward to seeing you in Atlantic City at the Judicial Conference for the Third Circuit, I am

Sincerely,

Louis Hoffman

Louis Hoffman

Encl.(1)
cc:
Harrison Tweed,Esquire,
1 Chase Manhattan Plaza
New York 5,N.Y.

Messrs. Russell B. Johnson and
C.DeWitt Rogers,Jr., President
and Treasurer of the Virgin Islands
Bar(Integrated), Christiansted,
St.Croix, Virgin Islands.

Lawyers' Committee for Civil Rights Under Law

FORMED AT THE REQUEST OF THE PRESIDENT OF THE UNITED STATES

Co-Chairmen

HARRISON TWEED
1 Chase Manhattan Plaza
New York 5, N.Y.

BERNARD G. SEGAL
Packard Building
Philadelphia 2, Pa.

Dear Lou:

Don't you think it would be a good idea to have the Attorney General express his appreciation. This is the first contribution from a bar association and unsolicited by us at that. Hoffman is a very good fellow.

Best regards.

August 19, 1963

Louis Hoffman, Esquire,
Dudley, Hoffman, Price & Grunert,
P. O. Box 717,
St. Thomas, Virgin Islands.

Dear Lou:

Thank you ever so much for sending to me check in the amount of $300 drawn to the order of Lawyers' Committee for Civil Rights Under Law constituting a contribution to the expenses of our committee by the Virgin Islands Bar (Integrated). All of us appreciate your initiative and industry in seeking and effecting this result.

I am sending copies of this letter to Messrs. Johnson and Rogers, President and Treasurer respectively, of the Virgin Islands Bar (Integrated) but I hope you will convey to everyone concerned the gratefulness of the Committee for this concrete expression of your association's interest and support.

I am delighted to learn that you are going to be at the Judicial Conference for the Third Circuit in Atlantic City next week.

With best regards,

Sincerely yours,

Bernard G. Segal

cc: Russell B. Johnson, President and
C. DeWitt Rogers, Jr., Treasurer,
Virgin Islands Bar, Christiansted,
St. Croix, Virgin Islands.

COPY

lal

SEP 3 1963

Louis McCleam, Esquire
Bailey, McCleam, Price & Grunert
P. O. Box 747
St. Thomas, Virgin Islands

Dear Mr. McCleam:

I have received from the Lawyers' Committee for Civil Rights under Law a copy of your letter dated August 15, 1963.

Messrs. Tweed and Segal advise that the unsolicited contribution from the Virgin Islands Bar was the first to be received by the Lawyers' Committee from a bar association. The Lawyers' Committee is moving forward rapidly and I am sure that the prompt support of your association is a matter of special encouragement to them.

Sincerely,

/s/

Attorney General

The Bar Association of the STATE OF KANSAS

COLUMBIAN BUILDING TOPEKA PHONE CE 4-2381
BOX 1717

August 8, 1963

Mr. Bernard G. Segal, Co-Chairman
Lawyers' Committee for Civil Rights
Under Law
Packard Building
Philadelphia 2, Pa.

Dear Mr. Segal:

As President of the Bar Association of the State of Kansas, I have been authorized by the Executive Council, to serve as a member of the Lawyers' Committee for Civil Rights Under the Law.

Fortunately, to date, Kansas has had little of the racial tensions which have come to some states.

Our laws in the realm of civil rights already are far more stringent in most areas than those currently being proposed by the present administration and I, as Attorney General, am endeavoring to enforce these laws to the fullest extent.

Sincerely,

William M. Ferguson
President

WMF/md

August 21, 1963

William H. Ferguson, Esquire,
President,
The Bar Association of the
State of Kansas,
Columbian Building,
Box 1717,
Topeka, Kansas.

Dear Mr. Ferguson:

Thank you for your letter of August 8th.

I am delighted to learn that the Executive Council of the Bar Association of the State of Kansas has expressly authorized you as President of the Association to serve as a member of this Committee.

It is gratifying to know that Kansas now has laws in the field of civil rights more stringent in most areas than those presently proposed by President Kennedy and that you, as Attorney General, are endeavoring to enforce those laws to the fullest extent.

We are delighted to have you as a member of our Committee. In due course we shall send to you material which has previously been circulated among the members of the Committee and, of course, you will be on our mailing list from here on.

Sincerely yours,

Bernard G. Segal

cc: Honorable Robert F. Kennedy
Harrison [illegible], Esquire

SEP 3

William M. Ferguson, Esquire
President
Bar Association of the State of Kansas
Columbian Building
Box 1717
Topeka, Kansas

Dear Mr. Ferguson:

Mr. Durward G. Segal has forwarded to me copies of the correspondence between you and him bearing the respective dates August 8 and 21, 1963.

As Attorney General of your state, you will be interested to know, if perhaps you are not already aware, that Congress studies have civil rights statutes, many of which, including in some instances the public accommodations provisions, have been on the books for many years.

I am pleased to know that the Bar Association of the State of Kansas has determined to be effectively represented on the Lawyers' Committee for Civil Rights under Law. It is particularly gratifying to learn that they have selected as their representatives the President of their Association and Attorney General of their State.

Sincerely,

/s/

Attorney General

SEP 3 1963

Mr. Charles Lee
President
[redacted] Democratic Clubs of Kansas
[redacted] 5th Street Hotel
Wichita, Kansas 67202

Dear Mr. Lee:

Thank you for your letter of August 16, 1963. The proposed "Step for Equity Program" is a positive approach to a serious problem which in some areas is very critical.

I am forwarding a copy of your letter to Messrs. [redacted], Co-Chairmen of the Lawyers' Committee for Civil Rights under Law. This committee is in the best position to receive and distribute such suggestions.

My personal regards to you and your father.

Sincerely,

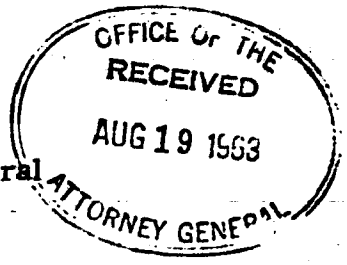
/s/

Attorney General

YOUNG DEMOCRATIC CLUBS OF KANSAS
SUITE 301 ALLIS HOTEL
WICHITA. KANSAS 67202

AREA CODE 316
TELEPHONE
AMHERST 2-6481 EXT. 301

August 16, 1963



Mr. Robert Kennedy, Attorney General
Department of Justice
Washington, D. C.

In Re: Proposed National "Shop for Equity Program."

Dear Sir:

I wish to commend you and the President for your practically sound action in the field of civil rights. I believe history will show that the turning point in the battle of the American Negro for social and economic "color-blindness" was your coolness in resisting pressures until public consensus for action was high enough to insure passage of meaningful legislation in 1963.

In a desire to build public consensus for your program in racially uncertain Kansas, I have conceived a program called "Shop for Equity," which hopefully will have broad appeal and will give every citizen a chance to participate, either privately or publicly, to whatever degree they wish. In addition, the program has the advantage of being positive rather than negative and should not provoke reaction among those people who do not favor use of an economic boycott as a socio-economic weapon. Many responsible Negro leaders here, (including Republicans), have reacted favorabley to a suggestion a Wichita Eagle reporter, Don Granger (who is also the local Time-Life stringer) that "Shop for Equity" contains the seeds of a

unified national program. I am therefore forwarding a copy of my definitive memo for your judgment on this matter, and if you agree that it has nationwide potential, for your tactical directions as to the initiating of this program.

I convey to you my warmest personal greeting since our last meeting here in Kansas when I met you as State Chairman of "Students for Kennedy-Johnson." I am sure you would not remember me from that meeting except for the presence of my father, Malcolm R. Lee, who was then Democratic County Chairman of Sedgwick County, Kansas. Coincidentally, Dad, in his new role as Employee Relations Assistant to the Regional Director of Post Offices in this three-state area, has become an acknowledged leader in the field of equal employment opportunities. Extending Dad's warmest personal regards and mine, I remain,

Very truly yours,

Claude Lee

Claude Lee, President
YOUNG DEMOCRATIC CLUBS OF KANSAS

CL/bs

cc/ Joe Dolan
Department of Justice
Washington, D. C.

YOUNG DEMOCRATIC CLUBS OF KANSAS
SUITE 301 ALLIS HOTEL
WICHITA, KANSAS 67202

MEMO

AREA CODE 316
TELEPHONE
AMHERST 2-6481 EXT. 301

July 26, 1963

TO: YD District Chairmen & County Club Chairmen
FROM: Claude Lee, President, YD Clubs of Kansas
SUBJECT: "Shop for Equality" Program

This is a preliminary information sheet on a State YD program which can be a moral and meaningful support to America's minority group seeking equal opportunity. We can, at the same, time help those people who, in their business practices, are helping to slowly but surely make equal opportunity for all Americans, a fact.

To be more specific, it is an obvious fact that the lack of equal opportunity in employment is a major bottleneck in the fight of Negro Americans to achieve real equality. Many types of businesses and retail stores still follow a practice of neither hiring nor permitting Negroes to trade in their establishment. However, for many reasons, some establishments in recent months have changed this policy and are more nearly "color blind" in their practices. This has happened even in some southern cities where stores and businesses have established integrated practices for the first time in history due to the pressures which have been brought to bear by many courageous American leaders.

However, it is the announced policy of the White Citizens Council in many of these areas to boycott those businesses and bring all possible economic pressure to bear on these businessmen. As a consequence, these businessmen are suffering. There are right here in our own Kansas communities, stores and businesses which are making available jobs to members of minority races. This has happened realitively quietly and without fanfare.

Just as it is our duty to call attention to inequities when they exist, it is also our duty to commend and encourage courageous people who do a good job in this vital area. It is for this reason that we have conceived and are beginning "Shop for Equality" program in Kansas.

"Shop" consists of the following: (1) We in our own communities attempt to discover what businesses and stores have in recent months made progress in hiring practices. This can be done several ways------through local NAACP chapter, through individual store managers etc.; (2) we distribute to our own members and in turn request them to use personal influence among their friends,

to buy, shop and otherwise exert positive economic pressure in favor of those business concerns which promote equal opportunity; (3) We prepare signs and organize "positive picketing parties"--- groups of members and other interested people who, during peak hours, picket these retail establishments and businesses with signs which urge customers to buy at these stores: for example "Shop here---the Management of this Store has Taken Action for Equal Opportunity and a Stronger America" or "Shop for Equity Here," etc. etc. Sign possibilities are endless; (4) The State Organization will very soon, furnish to each local club, a list of the chain stores with stores in Kansas who are suffering economically in the south because they practice the principal of equal opportunity. We can particularly promote shopping at these chain stores as a sort of "economic counterbalance" to off-set the economic pressure brought against these businesses by southern racists.

The above outline is very vague and subject to enlargement later. Your suggestions as how to make this program better are earnestly solicited.

However, I hope the purpose of this porgram is clear. All Americans spend millions of dollars over the counter every day. Most of these dollars are spent indiscrimently. Through our program of selective buying, we can make our dollars do "double duty," as it were.

They will not only buy the things we want in our highly productive economy; our dollars can also count as "votes" cast for equal opportunity, ---just another way of saying "thanks" to Americans who help in the slow but sure fight to make all Americans free----free to work and to take advantage of this great economic system which we have.

Let us never forget that a civil rights problem is not just a Negro problem; it is everyone's problem. All Americans can suffer because one American group suffers-----not only economically but morally and internationally. For that reason this program is vital to all Americans.

SEP 3 1963

Mr. Loyd Wright, President
Chairman, Resolutions Committee
National Bar Association, Incorporated
1903 Thirteenth Street, N. W.
Washington 9, D. C.

Dear Mr. Wright:

I am very grateful to receive copies of the resolutions adopted by the National Bar Association on August 23, 1963. The notable progress which is presently being achieved in the field of civil rights would not be possible except for the devoted work of many organizations and many individuals.

I am proud and honored to have played some part in this achievement, and the encouragement received from your organization is warmly appreciated.

Sincerely,

/s/

Attorney General

LAW OFFICES
DE LONG HARRIS
1001 ELEVENTH STREET, N.W.
WASHINGTON 1, D. C.
COLUMBIA 5-7000

August 20, 1963

VIA SPECIAL DELIVERY MAIL

Honorable Robert F. Kennedy, Esquire
Attorney General of the United States
Washington 25, D.C.

My dear Mr. Attorney General:

A Resolution commending you personally, and as Attorney General of the United States, for your forthright and courageous stand in the matter of the preservation of the civil rights of all Americans was unanimously passed by the National Bar Association at its 38th Annual Convention assembled in Chicago August 10, 1963. A copy of this Resolution is tendered to you herewith by undersigned under authority conferred upon him by the National Bar Association, Incorporated and contained within the Resolution.

On that same date the National Bar Association unanimously passed a Resolution deploring activities of certain local, State and Federal governmental officials, under color of their office, directed toward the suppression and prevention of the citizens' exercise of their privilege peacefully to assemble, petition, and protest by means of lawful demonstration, the denial of rights secured to them under and by virtue of the Constitution of the United States of America. Because of your manifest and demonstrated interest in the elimination of such abusive practices by office holders, a copy of this Resolution is being transmitted to you herewith.

On behalf of all of the members of the National Bar Association undersigned seeks, in simple terms, to convey to you the sense of the sincere appreciation of its membership for your highly successful and eminently effective incumbency in the office of Attorney General of the United States.

The gratitude of undersigned, as an individual, was personally expressed to you last fall upon the occasion of our meeting in your offices on September 27, 1962, in the interest of the National Bar Association. This letter will serve also to reiterate that expression.

Very respectfully yours,

De Long Harris,
Chairman, Resolutions Committee,
NATIONAL BAR ASSOCIATION, INCORPORATED

DLH:bcj
Enclosures: NBA Resolutions
1. "Commendation of Attorney General."
2. "Protesting Use of Office to Prevent Lawful Demonstration."

COPY

RESOLUTION

(Commendation to the Attorney General of the United States)

WHEREAS, the Honorable Robert F. Kennedy, during his tenure in the office of the Attorney General of the United States of America, has devoted his time untiringly and unceasingly in an effort to keep constant vigilance upon the preservation of constitutional rights throughout this broad nation; and,

WHEREAS, the Attorney General has used his good office without fear or favor in seeking the correction of denials of human rights as well as to strengthen the high ideals of equal justice before law; and,

WHEREAS, the Attorney General has consistently, fearlessly and courageously supported before the Congress of the United States proposed Civil Rights legislation in 1963, in the highest traditions of the legal profession, and in the great tradition of our theory of government,

NOW, THEREFORE, BE IT RESOLVED that the National Bar Association in annual convention assembled, unanimously expresses its gratitude, appreciation and commendation to the Honorable Robert F. Kennedy, Attorney General of the United States of America, for his fearless and courageous stand upon the subject of human rights.

BE IT FURTHER RESOLVED, that the President of the National Bar Association through its Chairman of the Resolutions Committee, cause copies of this Resolution to be transmitted to the President of the United States, the Attorney General of the United States, members of the Press, and that a record of the same be spread upon the minutes of the National Bar Association.

/s/ Robert E. Lillard
ROBERT E. LILLARD, President

/s/ De Long Harris
De LONG HARRIS, Chairman
Resolutions Committee

ATTEST:

/s/ Leona Pouncey Thurman
LEONA POUNCEY THURMAN,
Secretary

Done at Chicago, Illinois, this 10th day of August, A.D. 1963.

COPY

RESOLUTION

WHEREAS, the constitutionally guaranteed rights of assembly and expression have been used throughout this country in mass demonstrations to draw attention to racial discrimination, oppression, exploitation and other grievances of the Negro, and

WHEREAS, efforts to suppress the exercise of these rights of assembly and expression have taken varied forms: economic reprisal, loss of jobs, police brutality in the form of water, tear gas, beasts, indiscriminate arrests, and the unwarranted employment by local, state and, now, federal officials in the powers of their office.

THIS ASSOCIATION THEREFORE RESOLVES that it supports the peaceful exercise of the rights of assembly and expression to dramatize and correct just grievances, and it deplores and condemns all unlawful efforts to suppress and thwart the exercise of these rights.

/s/ Robert E. Lillard
ROBERT E. LILLARD, President

/s/ De Long Harris
De LONG HARRIS, Chairman
Resolutions Committee

Attest:

/s/ Leona Pouncey Thurman
LEONA POUNCEY THURMAN, Secretary

Done at Chicago, Illinois, this 10th day of August, 1963.

SEP 3 1963

William E. Brown, Esquire
President
University Circle Research Center, Inc.
Oil Building
University Circle
Cleveland 6, Ohio

Dear Mr. Brown:

Thank you for your letter of August 16, 1963, copy of which I am forwarding to Messrs. Baird and Speth. Both committee is performing a very valuable service in coordinating and strengthening the activities of local groups all over the country and making that experience available to other groups.

This Department will continue to maintain a close liaison with the Lawyers' Committee and I am pleased to know that you have agreed to serve on that committee.

Sincerely,

/s/

Attorney General

ERSITY CIRCLE RESEARCH CENTER INC.

August 16, 1963

The Honorable Robert F. Kennedy
Attorney General of the United States
Department of Justice
Washington, D. C.

Dear Bob:

I want to thank you for your letter of July 24th and indicate that I have heard from Mr. Harrison Tweed of New York and have agreed to serve on the Lawyers Committee for Civil Rights Under Law. I hope that this committee does make a real contribution in the Civil Rights Program and that I can be helpful in any deliberations or actions that may take place.

You suggested that I might prove helpful to you in offering any thoughts or suggestions derived from my experience in Cleveland about approaches useful in encouraging volunteer steps by businessmen and other community leaders for desegregation. Needless to say, the climate of crisis that has prevailed in the last several months has opened up responsible lines of communication that did not exist before, some public and others private in character. In Cleveland we have been fortunate enough to date to have avoided some of the more overt demonstrations related in particular to public construction projects. I enclose a recent article appearing in the New York Times citing the Cleveland experience and the first public confrontation with the Building Trades Unions. I can't say that this problem has been resolved or that Cleveland public, labor and management officials have all the answers by a long shot. The community leadership is, however, alert to the problem and some progress has been made.

This in itself is some progress, and should prove constructive, particularly in that the leaders in this community have placed this problem at the top of the "crisis pile" and are committed to make every reasonable effort to solve it. One of the most important steps in the solution is, of course, the continuous exchange of information between this community and other communities who are so committed. I have been particularly impressed with the coverage of the Christian Science Monitor in the newspaper medium, but feel that this medium alone is not sufficient. Perhaps it would be appropriate to use the staff of the Attorney General organized as it is on a district or regional basis as advisors and consultants in what is taking place in various parts of the country, suggesting experiences that are pertinent to communities such as

OLIN BUILDING ■ UNIVERSITY CIRCLE ■ CLEVELAND 6, OHIO

Cleveland. Such a timely exchange of information at this particular moment when the responsible leadership of an area is actively concerned might prove very productive. A principal problem that we all fear is the acceptance of scattered, piece-by-piece opiates in contrast with a commitment to an over-all program covering, not only the problem of employment desegregation, but also the comprehensive educational and job-training structure that must be established primarily under local initiative and leadership if anything really substantive is to be achieved.

Again, many thanks for your kind letter. If I can be of any further help in addition to serving on the Lawyers Committee for Civil Rights Under Law, please advise. Best wishes.

Sincerely yours,

Bill

Willard W. Brown
President

WWB:vrd

N.A.A.C.P. OFFERS PACT TO BUILDERS

Sees Big Gain for Negroes in Terms of an Agreement Reached in Cleveland

By JOHN D. POMFRET
Special to The New York Times

WASHINGTON, Aug. 8—The National Association for the Advancement of Colored People is prepared to recommend settlement of complaints of job discrimination in the construction industry on the basis of an agreement reached Sunday in Cleveland.

Herbert Hill, N.A.A.C.P. labor secretary, said today that the Cleveland pact was "the most significant breakthrough we have had so far anywhere in the country" since the association and other civil rights groups began picketing construction sites.

He said he would recommend to local N.A.A.C.P. branches that they negotiate on the basis of the Cleveland terms.

Sizable Influx Seen

The agreement covered the plumbing craft. It ended a work holiday called by union plumbers to protest hiring of two Negroes on the Cleveland Mall construction project and forestalled mass picketing planned by Negro groups to back demands that Negro plumbers be put on that job.

The agreement not only resolved the problem of the one construction job in question but also held out the potential of a sizable influx of Negroes into the union.

Under it, Local 55 of the Plumbers' union agreed to sign labor contracts with the Negro plumbing contractors.

It is estimated that there are

Continued on Page 8 Column 5

FRIDAY, AUGUST 9,

N.A.A.C.P. OFFERS PACT TO BUILDERS

Continued From Page 1, Col. 2

39 of these with about 150 employes.

All Negro journeymen employed by the Negro contractors will be admitted to membership in Local 55 as journeymen if they pass the journeyman's examination given by the local.

If an applicant for journeyman's status feels that the examination was unfairly administered or graded, he may appeal to a review committee. This will be composed of a nominee of the United States Department of Labor, one of the United Freedom Movement, a Negro group, and one of the national plumbers' union, which is called the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry.

4 Negro Youths Apply

The agreement also provides that the apprenticeship training program will be open to Negro applicants on the same basis as all other apprentices. Four Negro youths applied today.

Labor Department officials hope that the agreement will become pattern for eliminating the barriers to Negro entry into skilled building trades jobs throughout the country.

Those who developed it say it has a number of advantages. It holds out the potential of bringing a sizable group of Negroes into the union at one time without laborious case-by-case fights. It puts the Negro contractors in a position to bid on larger jobs than usual since they will be unionized and will not meet with resistance from other unionized trades, and since they will be paying the prevailing wage scales required of contractors on Federal jobs.

Since the agreement includes the Negro contractors, the new Negro journeymen will, in effect, be bringing their work with them into the local. This should pacify the apprehensions of white members who might otherwise feel that the entry of a large group of Negroes would mean more competition for the same amount of available work.

The agreement also eliminates a source of unorganized competition to unionized contractors.

Urgent Request Made

The Cleveland agreement was signed by representatives of the United Freedom Movement, the local and national plumbers' unions and the plumbing subcontractor on the mall project. Mayor Ralph S. Locher of Cleveland, Under Secretary of Labor John F. Henning and Donald S. Slaiman of the civil rights department of the American Federation of Labor and Congress of Industrial Organizations also were among the signers.

Mr. Henning went to Cleveland after Mayor Locher had made an urgent request to Labor Secretary W. Willard Wirtz for Federal assistance in getting the situation worked out.

Mr. Hill said that the Cleveland agreement "conclusively proves that the national labor federation and responsible international union leadership can move decisively against recalcitrant locals and that they have the power and authority to do so."

He added that it was "most unfortunate that they inevitably wait for a public crisis to develop before they move against the racist elements."

SEP 3 1963

David Berger, Esquire
1500 Suburban Station Building
Philadelphia 3, Pennsylvania

Dear Mr. Berger:

Thank you for sending me a copy of your August 9 letter to Mr. Samuel G. Segal. I was interested to read of the action taken by your subcommittee on Public Employment. Such far-sighted programming should help to bring about an increase in the number of Negroes employed in managerial positions by the City of Philadelphia and to encourage private employers to emulate the city's plans. Perhaps your subcommittee could keep local private employers apprised of progress made in public employment and of the resulting benefits.

We are indeed grateful for your efforts in this area. Also, your [illegible] offer to serve on the Segal-Segal Committee is much appreciated.

Mr. Segal has reported the results of the meeting convened on August 19 by the Philadelphia Citizens Advisory Committee on Civil Rights. This is just the sort of activity where the Lawyers' Committee can be most helpful in making available to the church for discussion and solution several the conferences held.

Sincerely,

/s/

Attorney General

CABLE ADDRESS: DAVBER
DAVID BERGER
LEWIS KATES

DAVID BERGER
LAW OFFICES
1420 SUBURBAN STATION BUILDING
PHILADELPHIA 3, PA.

WASHINGTON OFFICE
BOWEN BUILDING
815 FIFTEENTH STREET, N.W. (5)
EXECUTIVE 3-1070

August 9, 1963

Honorable Bernard G. Segal
1719 Packard Building
Philadelphia 2, Pennsylvania

Dear Bernie:

In my capacity as Chancellor of the Philadelphia Bar Association and as one who has over the years been intimately involved in virtually every civic problem and project affecting this area, I have watched with great interest the formation and operations of the President's Lawyers' Committee for Civil Rights Under Law. My interest in the extremely important work of this Committee has increased because of the aid which it has given President Kennedy and Attorney General Kennedy in their noble fight to eradicate fundamental inequities and disparities of opportunity among an important but minority group of United States citizens.

I agreed with President Kennedy and Attorney General Kennedy that every man's dignity must be protected against invasion. Otherwise no man's dignity can be secure.

Perhaps you would be interested in the work we have accomplished thus far in the Philadelphia area. Mayor Tate appointed a bi-racial non-partisan citizens' committee to recommend specific actions. The co-chairman of this committee is the Honorable Thomas D. McBride, former Chancellor of the Philadelphia Bar Association. In my capacity as Chancellor of the Philadelphia Bar Association I was appointed to this committee and subsequently designated by the committee as chairman of the subcommittee on Public Employment.

In accepting this appointment I did so on the express condition that the committee should be an action committee rather than one satisfied merely with the issuance of mimeographed statements to the media of mass communications. I was given these assurances by the Mayor and others on the committee.

Since my appointment as chairman of the subcommittee we have actually brought about significant changes insofar as the municipal government of Philadelphia is concerned. It was only natural that my subcommittee should begin its work at this level inasmuch as my experience as the City Solicitor of Philadelphia from 1956 to 1963 gave me some insight into the problem.

Among the specific actions already recommended to the Mayor and the City Administration and accepted by them are the following:

1. There will be a reorganization of the oral examining boards which give the examinations for appointment and promotion in the civil service.

This is of the greatest importance because many qualified Negroes and non-whites have been extremely reluctant either to apply for civil service appointment at the intermediate or higher levels or for promotions to such levels for fear that the examining board would in any event discriminate against them. As a result, the civil service has been deprived of a large number of truly qualified personnel. These citizens at the same time have failed to accept opportunities which otherwise would have been available to them. Under the reorganization of the oral examining boards, Negroes and others will be included whose very membership on the boards will instill confidence in all that the examinations will be administered absolutely fairly and without discrimination. This will bring about a substantial increase in appointments and promotions, especially in the service departments such as the police and fire departments. The disparity presently existing between whites and non-whites at the intermediate and higher levels will thus be reduced greatly.

2. A widespread training program will be introduced, coordinated and stressed. The significance of this is as follows: It is well known that because of prior lack of educational and employment opportunities, many Negroes and other non-whites are not technically qualified for appointment to intermediate and higher positions in the civil service. At the same time there are a number of in-government and out-of-government training courses. These include courses given by our local schools and colleges including University of Pennsylvania, Temple University, Villanova University, Drexel Institute, La Salle College, St. Joseph's College, Haverford College, Swarthmore College and Bryn Mawr College among others. The City Administration will take action to coordinate the information relating to all of these training programs. It will give widespread publicity to the existence of these programs and will urge members of the civil service to take advantage of these, and others who seek to enter civil service to do the same thing. In a comparatively short time this will result in a substantial increase in a number of certified technically qualified non-whites for positions at the intermediate and higher levels of the civil service.

3. In respect to exempt positions, in seeking the best qualified personnel to fill these, the appointing powers are urged and expected to get give recognition to the disparity of personnel existing between whites and non-whites at the intermediate and higher levels of government complex.

These are only some of the more significant actions already taken. I can assure you that we will continue to take specific actions at various levels and will continue to assure that results will be obtained.

In light of the above, recognizing the tremendous effort that the President and his Committee have been making in this area, I shall be very pleased to volunteer my services as a member of the President's Committee. I think that the experience which we have had here in Philadelphia would possibly be of some assistance in developing a national policy and I should be very happy to participate with you in the very great work which you and the Committee are doing.

Moreover, it would give me the opportunity to coordinate the work of the Standing Committee on Civil Rights which you established during your administration as Chancelior of the Philadelphia Bar Association. This Committee has steadily acted since its inception to protect and defend the civil rights and civil liberties of all.

With expressions of my highest esteem, I am

Sincerely,

David Berger

DB/hc

cc: Honorable Robert F. Kennedy, Attorney General
Louis F. Oberdorfer, Assistant Attorney General